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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,788	01/11/2002	Donald Espie Hay	LWC-189-107	8388
26875	7590	12/21/2004	EXAMINER	
WOOD, HERRON & EVANS, LLP			COLE, LAURA C	
2700 CAREW TOWER			ART UNIT	
441 VINE STREET			PAPER NUMBER	
CINCINNATI, OH 45202			1744	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/044,788	HAY, DONALD ESPIE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Laura C Cole	1744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 4-5, 7-9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoagland, USPN D361,894 in view of Tupper, USPN 2,900,656.

Hoagland discloses the claimed invention including a kitchen cleaning element comprising a body from which extends an elongate handle (see Figures), a plurality of bristles depending from the underside of the body (see Figure 1, bristles are in the "hatched" area), an elongate squeegee blade (see all Figures, especially Figure 2 wherein the rectangle is the top of the blade) arranged on the body extending in a direction that is transverse to the direction that the handle extends (Figure 1, 3, and 4) and transverse to the direction to which the bristles extend (see Figures). The blade is arranged at an opposite end of the body to the handle (see Figures). The blade extends in a direction that has a component in a direction opposite to which the bristles extend (see Figures). The squeegee blade curves upwardly away from the body (Figures 3 and 4). The squeegee blade has a width that is comparable to a width of the body (see Figures). The body includes a protruding lip with the squeegee blade molded onto the lip (see minor protrusion on the body attached to the lip in Figure 4). The body is generally in the shape of a spatula with the bristles extending from a lower side

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thereof (see Figures). The squeegee blade has a *substantially* uniform lateral width (see Figures.) The squeegee blade is joined to the body along a line substantially perpendicular to the first direction (see Figures). Each bristle includes a distal end distant from the body, wherein the distal ends are arranged substantially in a flat plane *generally* parallel to the first direction (see Figures). Hoagland does teach or suggest that the blade is formed of a resiliently flexible material.

Tupper discloses a cleaning, scraping, and mixing implement wherein that has a blade that is comprised of a plastic and resilient material so that the scraper blade will not subject the object being cleaned to breaking, scratching, or fractures, and also so that the grip on the handle will not result in undue pressure, and that allows the blade to have a local deformability with resiliency (see Column 1 Lines 34-43, 60-68).

It would have been obvious for one of ordinary skill in the art to modify the blade of Hoagland to be formed of a flexible, resilient material, as Tupper teaches, so that the blade edge may deform in such a way to conform to the shape of the surface that is being cleaned or scraped without the user's grip having undue pressure.

2. Claims 1, 4-5, 7, 9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowe et al., USPN D459,088 in view of Tupper, USPN 2,900,656.

Rowe et al. disclose the claimed invention including a cleaning element comprising a body from which extends an elongate handle (see Figures), a plurality of bristles depending from the underside of the body (see Figure 2), an elongate squeegee blade (see Figures 1-2) arranged on the body extending in a direction that is transverse to the direction that the handle extends (Figures 1 and 2) and transverse to the direction

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to which the bristles extend (see Figures). The blade is arranged at an opposite end of the body to the handle (see Figures). The blade extends in a direction that has a component in a direction opposite to which the bristles extend (see Figures). The squeegee blade curves upwardly away from the body (Figures 1 and 2). The squeegee blade has a width that is comparable to a width of the body (see Figures). The body is generally in the shape of a spatula with the bristles extending from a lower side thereof (see Figures). The squeegee blade has a *substantially* uniform lateral width (see Figures.) The squeegee blade is joined to the body along a line substantially perpendicular to the first direction (see Figures). Each bristle includes a distal end distant from the body, wherein the distal ends are arranged substantially in a flat plane *generally* parallel to the first direction (see Figures). Rowe et al. does teach or suggest that the blade is formed of a resiliently flexible material.

Tupper discloses a cleaning, scraping, and mixing implement wherein that has a blade that is comprised of a plastic and resilient material so that the scraper blade will not subject the object being cleaned to breaking, scratching, or fractures, and also so that the grip on the handle will not result in undue pressure, and that allows the blade to have a local deformability with resiliency (see Column 1 Lines 34-43, 60-68).

It would have been obvious for one of ordinary skill in the art to modify the blade of Rowe et al. to be formed of a flexible, resilient material, as Tupper teaches, so that the blade edge may deform in such a way to conform to the shape of the surface that is being cleaned or scraped without the user's grip having undue pressure.

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3. Claims 1, 4-5, 7-9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoagland, USPN 5,317,779 in view of Tupper, USPN 2,900,656.

Hoagland discloses the claimed invention including a kitchen cleaning element comprising a body from which extends an elongate handle (10), a plurality of bristles depending from the underside of the body (9), an elongate squeegee blade (18) arranged on the body extending in a direction that is transverse to the direction that the handle extends (Figures 1- 3) and transverse to the direction to which the bristles extend (see Figures). The blade is arranged at an opposite end of the body to the handle (see Figures 1 and 3). The blade extends in a direction that has a component in a direction opposite to which the bristles extend (see Figures). The squeegee blade curves upwardly away from the body (Figure 3). The squeegee blade has a width that is comparable to a width of the body (see Figures). The body includes a protruding lip with the squeegee blade molded onto the lip (see minor protrusion on the body attached to the lip in Figure 3). The body is generally in the shape of a spatula with the bristles extending from a lower side thereof (see Figures). The squeegee blade has a *substantially* uniform lateral width (see Figures.) The squeegee blade is joined to the body along a line substantially perpendicular to the first direction (see Figures). Each bristle includes a distal end distant from the body, wherein the distal ends are arranged substantially in a flat plane *generally* parallel to the first direction (see Figures). Hoagland does teach or suggest that the blade is formed of a resiliently flexible material, although in Column 4 Lines 43-46 it is stated that the device is preferably molded as a single, integral, and one-piece structure.

Tupper discloses a cleaning, scraping, and mixing implement wherein that has a blade that is comprised of a plastic and resilient material so that the scraper blade will not subject the object being cleaned to breaking, scratching, or fractures, and also so that the grip on the handle will not result in undue pressure, and that allows the blade to have a local deformability with resiliency (see Column 1 Lines 34-43, 60-68).

It would have been obvious for one of ordinary skill in the art to modify the blade of Hoagland to be formed of a flexible, resilient material, as Tupper teaches, so that the blade edge may deform in such a way to conform to the shape of the surface that is being cleaned or scraped without the user's grip having undue pressure.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoagland, USPN 5,317,779 in view of Tupper, USPN 2,900,656, and in further view of Vrignaud, USPN 5,934,762.

Hoagland and Tupper disclose all elements above, including a squeegee blade that is molded (Column 4 Lines 43-46).

Vrignaud discloses a method for manufacturing a brush with multi-heads. Vrignaud includes the process of overmolding, molding individual parts, and then molding the portion a second time with additional elastomer material to create a flexible securement (Column 2 Lines 41-63).

It would have been obvious for one of ordinary skill in the art to manufacture the squeegee blade and block of Hoagland and Tupper by overmolding, such as Vrignaud teaches, as an alternative means to molding the device integrally so that the connection

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between blade and body will remain especially rigid with a flexible "lip" or hinged connection.

### ***Applicants Arguments***

5. In the response filed 09 November 2004 the Applicant contends that:

A. Hoagland (herein '894), Rowe, and Hoagland (herein '779) fail to teach or suggest all elements of the claimed invention, and there is no teaching or suggestion to combine any of these references with Tupper. Specifically, there is no teaching or suggestion that the rigid scraper portions of '894, Rowe, or '779 to be modified to incorporate the resilient material of Tupper. These rejections are hindsight reconstruction using the Applicant's own disclosure.

B. Claims 4, 5, 7-9, and 11-13 depend from Claim 1 and are therefore in condition for allowance for at least the same reasons as Claim 1.

C. Vrignaud fails to cure the deficiencies in the combination of '779 and Tupper.

### ***Response to Arguments***

6. Applicant's arguments A-C filed 09 November 2004 have been fully considered but they are not persuasive.

A-C. '894, Rowe, and '779 each disclose a brush with a blade structure, however none of the references specifically state a material or rigidity about the scraping blade element. Tupper teaches a cleaning and scraping blade that is formed of a resiliently-flexible material for many reasons including that the blade is capable of deformation along specified areas so that the device becomes the shape conforming

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with pressure on the handle, so that the device will not subject the surface being cleaned to breakage, scratching or fracture. Therefore, it would have been obvious for one of ordinary skill in the art to modify the blade of '894, Rowe, or '779 to be formed of a flexible, resilient material, as Tupper teaches, so that the blade edge may deform in such a way to conform to the shape of the surface that is being cleaned or scraped without the user's grip having undue pressure.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*LCC*  
LCC  
16 December 2004

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